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October 24, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: Armstrong Telecommunications, Inc. v.
Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access
Transmission Services LLC d/b/a Verizon Access Transmission Services, and
MCI Communications Services Inc.
Docket Nos. C-2010-2216205, C-2010-2216311,
C-2010-2216325, and C-2010-2216293**

Dear Secretary Chiavetta:

Enclosed please find the original of Verizon's Response to Armstrong's Motion to Compel, being filed on behalf of Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively, "Verizon") in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/meb

Via E-Mail and Federal Express
cc: The Honorable Dennis J. Buckley
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's Response to Armstrong's Motion to Compel, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 24th day of October, 2011.

VIA E-MAIL and FIRST CLASS MAIL

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Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Armstrong Telecommunications, Inc.	:	
	:	
Complainant,	:	
	:	
v.	:	Docket Nos. C-2010-2216205
	:	C-2010-2216311
Verizon Pennsylvania Inc., Verizon North LLC,	:	C-2010-2216325
MCImetro Access Transmission Services LLC	:	C-2010-2216293
d/b/a Verizon Access Transmission Services and	:	
MCI Communications Services Inc.,	:	
	:	
Respondents.	:	

**VERIZON'S RESPONSE TO
ARMSTRONG'S MOTION TO COMPEL**

Pursuant to 52 Pa. Code § 5.342(g)(1), Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (“Verizon”) respond to the motion of Armstrong Telecommunications, Inc. (“Armstrong”) to compel a response to Armstrong II-3.¹

¹ Armstrong’s motion to compel was filed on October 17, 2011, making Verizon’s response due October 24, 2011. 52 Pa. Code § 5.342(g)(1) and § 1.12(a). Although Armstrong’s motion states that “Verizon’s answer should be required within 3 days,” there was no agreement or order shortening the response time provided under the rule.

On October 11, 2011 Verizon timely provided the following objection and response to Armstrong II-3:²

REQUEST:

Reference Verizon St. 1.0 at 14. Provide a full and complete copy of the agreement with Bandwidth.com, including any side agreements, letters or understandings.

OBJECTION:

Verizon objects to this request because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence and seeks confidential information regarding Verizon's dealings with third parties. Verizon cited the Bandwidth.com agreement for the limited purpose of showing that other carriers have "entered into a commercial agreement with Bandwidth.com for the exchange of VoIP traffic at \$0.0007 per minute," to rebut Armstrong's claim that this is not a valid rate in the industry. Verizon will disclose the pertinent provision demonstrating that fact, below.

Subject to and without waiving this or its general objections, Verizon responds as follows:

RESPONSE:

Verizon's commercial agreement with Bandwidth.com contains confidentiality provisions that restrict its production to third parties and Verizon will not produce

² Although Verizon answered two sets of discovery (sets II and II) within the highly expedited five day period agreed by counsel, and provided what Armstrong concedes was a voluminous amount of data on the due date, Armstrong takes Verizon to task for failing to e-mail the responses by 4:30 p.m. on October 11. But the voluntary arrangement for shortened discovery memorialized in an August 22, 2011 e-mail from Armstrong's counsel to the presiding officer only agreed upon a "[f]ive day discovery answer/objection period," and did not also agree that responses would be provided by 4:30 on the fifth day. In the context of such a shortened discovery turn-around, Verizon would not have also agreed to an unrealistic requirement to provide the answers by a set time of day. In any event, Armstrong's position on a 4:30 deadline is puzzling in light of the fact that Armstrong's answers to Verizon's Set II discovery were also due on October 11 and were not provided by 4:30 on that day, but were provided only two days later, on October 13.

Armstrong also complains that Verizon's answers and objections were provided in the same document, but 52 Pa. Code § 5.34(c) requires that "an objection shall be contained in a document separate from an answer as required by the time provisions of subsection," because objections are normally due before the answers. Since the parties in this case agreed that answers and objections would be provided on the same day, separate documents were not "required by the time provisions of subsection."

the agreement. However, Verizon is authorized to disclose the following provision:

8.7 Notwithstanding anything else in this Section . . . , each party shall be entitled to disclose to any other party that Bandwidth.com and Verizon have entered into a commercially-negotiated agreement for the mutual exchange of Voice Over Internet Protocol Traffic for a term of at least two (2) years and at a rate of \$0.0007 per minute of use (and, in the case of 8YY VOIP Traffic, also including an applicable 8YY query charge equal to the rate for 8YY queries as set forth in the effective interstate (FCC) tariff of MCI Metro Access Transmission Services LLC), subject also to certain related interconnection terms.

On October 17, 2011, Armstrong filed a motion to compel Verizon to produce the entire agreement with Bandwidth.com. Armstrong's counsel did not raise the issue with Verizon before filing this motion, and Verizon's first notice that Armstrong disagreed with its objection was when it received service of the motion to compel. Had Armstrong raised the issue, Verizon would have proposed the amicable resolution that it now proposes in this response.

In its direct testimony, Verizon stated that: "Earlier this year, Verizon entered into a commercial agreement with Bandwidth.com for the exchange of VoIP traffic at \$0.0007 per minute," and cited a Bandwidth.com press release for support of that statement. This fact was one of several examples provided in support of Verizon's contention that "[i]n the absence of an established [FCC] rate" for the exchange of IP traffic Verizon "applied the \$0.0007 rate as the most reasonable placeholder" pending the parties' negotiation of a rate to cover this traffic and "the \$0.0007 a minute rate is widely in use in the industry." (VZ St. 1 at 13-14). Verizon is not asking the Commission to set \$0.0007 as a rate for the exchange of VoIP traffic or to require Armstrong to agree to that rate, and so Verizon's citation of the fact that other carriers have agreed to a \$0.0007 rate was for a limited purpose.

The Verizon/Bandwidth.com agreement contains confidentiality provisions precluding disclosure of any portion of the agreement (other than the above-quoted paragraph) absent written consent of the other party. Bandwidth.com is a CLEC operating in a highly competitive industry and understandably does not want the details of its commercial agreements with other carriers disclosed to its competitors. This is an industry reality that Armstrong well understands, since Armstrong itself has repeatedly objected to producing or disclosing the contents of its own commercial agreements with the carriers to which it hands off traffic for delivery to Verizon, claiming that they contain confidentiality provisions that preclude such disclosure. (See Armstrong Objection to Verizon II-1). Armstrong inconsistently argues here that, notwithstanding these confidentiality provisions, Verizon should be required to produce a copy of the entire Bandwidth.com agreement to Armstrong.

Verizon continues to maintain that the non-rate terms and conditions of the agreement are not relevant, since Verizon only relies on a reference to Bandwidth.com's public announcement about the rate it agreed to pay for a very limited purpose, to show that Bandwidth.com is one of many companies that has agreed to the \$0.0007 rate. Verizon has disclosed both the provision of the agreement supporting that fact and Bandwidth.com's press release stating that it agreed to this rate (attached to Verizon's testimony). This limited reference to the rate that Bandwidth.com itself announced publicly does not make the non-rate terms and conditions of the confidential commercial agreement relevant.

Armstrong states that it wishes to review the other terms of the agreement "to put the compensation in proper context" because it wishes to "verify the applicability of that

agreement to the dispute and the traffic at issue herein.” (Armstrong Motion ¶ 14-15).

Verizon is not opposed to allowing Armstrong’s counsel to review the entire agreement, for the limited purpose of reviewing the rate in context, and is willing to make the document available for inspection as “Highly Confidential” information under the following provision of the protective order:

Proprietary Information or other material designated as “Highly Confidential” shall be produced for inspection by a party's counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge for resolution.

Verizon has contacted Bandwidth.com and secured its agreement only to allow Armstrong’s counsel to review a copy of the agreement at Verizon’s office, but not to take a copy of the agreement. Verizon submits that such inspection by counsel is sufficient for Armstrong to assure itself that, in the context of the entire agreement, Bandwidth.com has in fact agreed to a rate of \$0.0007 for the exchange of VoIP traffic, while at the same time balancing the expectation of Bandwidth.com, an uninvolved third party, that its commercial terms will be kept confidential. Verizon’s proposal is consistent with the terms of the protective order entered in this case, which recognizes that it is appropriate for competitively sensitive information to be provided for counsel’s inspection only, without providing copies. Verizon has made the above proposal to Armstrong, but it has not been accepted.

Date: October 24, 2011



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